

SUPREME COURT OF NIGERIA
5TH FEBRUARY, 2010. SC. 144/2003
CORAM:- N. TOBI, A. M. MUKHTAR, I. F. OGBUAGU,
J. O. OGBE, J. A. FABIYI JJSC

ALHAJI BELLO NASIR APPELLANT
AND
1. CIVIL SERVICE COMMISSION
KANO STATE
2. COMMISSIONER FOR LAND AND RESPONDENTS
REGIONAL PLANNING KANO STATE
3. ATTORNEY-GENERAL KANO STATE

JUDGMENTS - Evidence - Analysis - Liberty of judges - Unless there are oral or documentary materials before the court - Worth the while of a judge to consider extensively - He may not be obliged to make such detailed analysis (H1)

JUDGMENTS - Complaints - Failure to consider some - Effect - It is inconsequential - For as long as the judge considered the most vital aspects of the application - There was no infringement of fair hearing (H2)

JURISDICTION - Courts - Objection - In the middle of trial - Propriety - Since it concerned jurisdiction - The objection was properly raised - For such objection can be raised at any time before judgment (H3)

FACTS

The plaintiff/appellant sued defendants/respondents before the High court of Kano State claiming sundry reliefs by which he challenged alleged wrongful interdiction and subsequent dismissal from the civil service of Kano State as per the letters of interdiction and dismissal dated 22nd August 1995 and 30th January 1996, respectively. After appellant had closed his case and while the case of respondents was going on, counsel for respondents filed a motion on notice praying for the dismissal of the suit for being statute barred.

After hearing arguments on the motion, the learned trial judge

expressed the view that ruling on the motion would be better reserved and given as part of the final judgment at the end of trial. Eventually after trial, the judge ruled that the action was statute barred in that it was filed outside the statutory three-month period required by law. Aggrieved, appellant appealed to the Court of Appeal which court affirmed the decision of trial court and dismissed the appeal. Still dissatisfied, appellant has come on a further and final appeal to Supreme Court. It is the contention of appellant that the procedure by which the plea of statute-bar was raised was bad in law; and moreover that trial judge did not consider all the issues he raised in his challenge of the plea thereby infringing his right to fair hearing.

ISSUES FOR DETERMINATION

“1. Whether the lower court was right in saying that the trial court considered all the issues raised by the Appellant in his reply to the preliminary objection raised by the respondent? If the answer is in the negative whether such denial or consideration of those issues amounted to the breach of rules of hearing as enshrined in the 1999 Constitution?.....

2. Whether the lower court has correctly interpreted and applied the provisions of order 24 Rules (2) and (3) and Order 25 Rule 6 (1) and (35) of the Kano State High Court (Civil procedure) Rules 1988.....

3. Whether the statute of Limitation can be applicable in the circumstances of this matter having regard to the case of OFFOBOCHE VS OGOJA LGA (2201) (sic) 7 SCNJ 468 AT 483, 490 - 49 AND EKEOGU VS ALIRI (1990) NWLR (part 126) 345 at 354, and the contractual nature of the relationship between the Appellant and Respondents.....”

HELD (Unanimously dismissing the appeal per **MUKHTAR JSC) **JUDGMENT - Evidence - Analysis - Liberty of judges****

1. There was therefore nothing in the appellant’s evidence to analyse or dwell on in detail, as the appellant would have wanted the learned trial Judge to do. Common sense dictates that unless there are oral or documentary material before the court that is worth the while of a Judge to consider extensively, he may not be obliged to make such detailed analysis. As a matter of fact, I would say the appellant’s counter-affidavit contained unnecessary facts that were not apposite

to the objection raised. The learned trial Judge was in the circumstances at liberty to accept and rely on the respondents' evidence as he did, for it is settled law that evidence that are relevant to the matter in controversy, and that have not been challenged or debunked remain good and credible evidence that may be used in the just determination of dispute. (p. 659 C)

JUDGMENTS - Complaints - Failure to consider some - Effect

2. What are the issues the learned trial judge was alleged not to have analysed in detail? They are that the Statute of limitation must have been pleaded specifically, the date when the injury complained of occurred, and the fact that negotiation to settle the suit were on. I think that the fact that the learned trial Judge did not go into a detailed consideration of these complaints in his judgment is inconsequential as long as he has considered the most vital aspects of the application, briefly as it may have been.

In all these wise, the issue of lack of fair hearing raised by learned counsel for the appellant is of no moment. There was therefore no infringement of the right of fair hearing. (p. 659 H/660 G)

JURISDICTION - Objection - In the middle of trial - Propriety

3. The objection raised being that of jurisdiction was properly raised, notwithstanding, the stage at which the ruling, and the order made. The most important thing is that the substance of the objection was dealt with and the correct decision was arrived at. An elementary principle of the law and which has been dealt with in a plethora of authorities is that an objection to the jurisdiction of a court can be raised at the beginning or the end of a proceeding, even just before judgment stage. It is fundamental that it can be raised even in an appellate court. (p. 660 H)

NOTABLE POINT OF INTEREST

MUKHTAR JSC

1. The motion is as good as pleadings in raising statute bar

If the function of pleadings is to put the other party on notice of what to expect at the trial, then a motion on notice, (as was in the instant case) to dismiss a case on point of law precludes elements of surprises. The appellant cannot feign ignorance of the point of law raised

before the motion was moved. The appellant was very much aware of what the respondents were seeking from the court, and had the opportunity to meet it headlong. The appellant cannot say that he was prejudiced, for I believe even if that point of law on Statute of limitation was raised in the statement of defence, he could not have proffered more argument than he did in the course of the proceedings in respect of the motion. (p. 661 H)

REPRESENTATION

Mr. M. Bulama, with him Ibrahim Muaz for the Appellant.
Mr. Suraj Saeda, with him M.S. Demeji DCL, Salisu Marmara ADLD, Maria Ado PSC and R.S. Schuna, S.C. M. O. J. Kano State for the respondents.

CASES REFERRED TO

- FRN v. Gold 2007 11 NWLR part 1044 page 1
- Olubango v. Dawodu 2006 15 NWLR part page 76
- Echi & Ors. v. Nnamani & Ors. (2000) 5 SC 62 at 70
- Kotoye v. Saraki (1994) 7 NWLR (Pt.357) 414 @ 466
- Ojomo vs Ije (1987) 4 NWLR (pt 64) 216 at 244 - 245
- Ibrahim vs JSC (1998) 14 NWLR (part 584) 1 at page 33
- EKEOGU VS ALIRI (1990) NWLR (part 126) 345 at 354
- Sanda v. Kukawa L.G (1991) 2 NWLR (pt. 174) 379 at 388
- Emiafor v. Nigerian Army (1999) 12 NWLR (631) 326 at 369
- Katto v. Central Bank of Nigeria (1991) 9 NWLR (Pt.214) 126
- Fajemirokun v. C. B. Nig. Ltd (2004 5 NWLR (Pt. 1135) 588 at page 599
- OFFOBOCHE VS OGOJA LGA (2201) (sic) 7 SCNJ 468 AT 483, 490 - 491
- Unibiz Nigeria Ltd. v. Commercial Bank Credit Lyonnais Ltd 2003 13 NSCQR 292 at 311
- Mobil Oil Nigeria PLC v. Kena Energy International Limited 2001 1 NWLR part 695 page 555
- Overseas Construction Co. (Nig.) Ltd. v. Greek Enterprises (Nig.) Ltd 1985 3 NWLR part 13 page 407

STATUTES & RULES REFERRED TO

Public Officers (Protection) Law, Cap, 121, Laws of Kano State, s. 2
Constitution of the Federal Republic of Nigeria, 1999, s. 36

Kano State High Court (Civil Procedure) Rules, 1988, O. 24 rr. 2 & 3; and O. 25 r. 6(1) and (35)

B

BOOK REFERRED TO

Aguda, Practice & Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria, 2nd Ed; page 279

C

LEAD JUDGMENT BY MUKHTAR JSC

The appellant as plaintiff in the High Court of Justice of Kano State sought the following reliefs against the respondents:-

“(a) A declaration that the plaintiff still (sic) in the service of the defendants and that he is entitled to his full remunerations and leave allowances since dismissal.

(b) A declaration that the letter of his dismissal dated 30th January, 1996 and letter of interdiction dated 22nd August 1995 are null and void and of no effect.

(c) A declaration that the plaintiff is entitled to all his allowances as an employee of the defendants.

(d) A declaration that the plaintiff who is an employee of the defendants be with immediate effect re-instated by the defendants.”

F

Pleadings were exchanged by the parties. After the appellant had given evidence and closed his case, the defendants/respondents filed their statement of defence. On 18/4/2000 learned counsel for the respondents moved a motion for the dismissal of the suit for being statute barred. The learned counsel for the appellant filed a counter affidavit. Both learned counsel addressed the court on the motion, but the learned trial judge rather than rule on it made the following observation:-

“I am of the opinion that the implication of this application will entail my giving a ruling which in effect would have the implication of a final judgment. And because of this I wish to reserve my ruling until the end of the trial and make application and the ruling to form part of my judgment.”

Indeed the learned trial judge after going through the gamut

of appraising the evidence before him found as follows in his judgment in the final analysis:-

“At the end of the day I find and hold that this suit was filed outside the 3 month period required by the law and is therefore statute barred.”

B Aggrieved by the decision the plaintiff appealed to the Court of Appeal Kaduna division. The court affirmed the decision of the court of first instance and dismissed the appeal. Again the plaintiff was aggrieved by the dismissal of his appeal, and he has appealed to this court. As is the practice in this court and in accordance with the rules of court, both learned counsel for the parties exchanged briefs of argument to this appeal, which were adopted at the hearing of the appeal. Issues for determination were formulated in the briefs, and I will reproduce those in the appellant’s Amended brief of argument D here below. They are:-

“1. Whether the lower court was right in saying that the trial court considered all the issues raised by the Appellant in his reply to the preliminary objection raised by the respondent? If the answer is in the negative whether such denial or consideration of those issues amounted to the breach of rules of hearing as enshrined in the 1999 Constitution?.....

2. Whether the lower court has correctly interpreted and applied the provisions of order 24 Rules (2) and (3) and Order 25 Rule 6 (1) and (35) of the Kano State High Court (Civil procedure) Rules 1988.....

3. Whether the statute of Limitation can be applicable in the circumstances of this matter having regard to the case of OFFOBOCHE VS OGOJA LGA (2201) (sic) 7 SCNJ 468 AT 483, 490 - 49 AND EKEOGU VS ALIRI (1990) NWLR (part 126) 345 at 354, and the contractual nature of the relationship between the Appellant and Respondents.....”

H It is on record that the grounds upon which the application was brought (pursuant to Section 2(9) of the Public Officers (protection) Law Cap. 121 Laws of Kano State for the dismissal of the suit) are as follows:-

“4 (b) That following proof of allegation of gross misconduct of hiding of files the plaintiff/respondent was dismissed.

(c) That the letter of dismissal was served on the defendant/

respondent on 30th January, 1996.

(d) That the plaintiff/respondent filed this action on 25th June, 1996 verily six months after he was served with the letter of dismissal.

(e) That it will be in the interest of justice to dismiss this action.

B

(f) That the dismissal of this action will not prejudice the plaintiff/respondent.”

The appellant filed a counter-affidavit, the vital depositions of which read thus:-

C

“3 (c) That the Statement of Claim was served on the Defendant/ Applicants counsel. Amina Y. Yargaya (Mrs.) on the 6/3/96.

(e) That on the 6/3/97 when Appellant’s solicitor was in court the matter was adjourned to 30/4/97 to enable Applicant’s counsel file their Statement of Defence.

(f) That on the 30/4/97, the Plaintiff/Respondent opened his case and same was adjourned to 23/6/97 for continuation of hearing.

E

That the Applicants and their counsel were absent from court on the said 30/4/97 without giving any explanation”.

The learned counsel for the appellant has submitted that the learned trial judge was in error when after considering the evidence before him he held inter alia in his judgment as follows:-

F

“It is in evidence that the plaintiff was dismissed from service on the 30th January 1996 whereas he filed and commence (sic) this suit on 28th June 1996. The argument of Mr. Surajo Director of Civil Litigation are therefore in order that this suit was not commence (sic) within the three month required “by the law to wit (sic) the public officers protection law. I am buttress (sic) in my opinion by the decision in Ibrahim vs JSC (1998) 14 NWLR (part 584) 1 at page 33 At the end of the day I find and hold that this suit was filed outside the 3 month period required by the law and is therefore statute barred.”

H

The finding of the lower court on the ruling of the trial court was also attacked by learned counsel, submitting that it cannot be supported having regards to what is contained in the record of pro-

ceedings of the trial court. According to him the breach of the failure of the trial judge not giving a detailed ruling deprived the appellant of knowing the position of the court on the issue raised and argued, and by this failure the right of fair hearing of the appellant has been infringed. He placed reliance on the case of Unibiz Nigeria Ltd. v. Commercial Bank Credit Lyonnais Ltd 2003 13 NSCQR 292 at 311.

On moves to settle the matter, the learned counsel for the respondent has argued that the case of Nwadiaro v. Shell Petroleum (1990) 5 NWLR (pt. 150) 322 relied upon by the appellant is inapplicable, because in that case, the Court of Appeal found that the defendant did not file a statement of defence, the Court of Appeal found that there was negotiation and admission of liability, whereas the reverse is the case in the instant case. It was further submitted that even on the authority of Nwadiaro's case negotiation cannot stop time from running. On the right to fair hearing, it was argued that the appellant was heard by the trial court as was found by the Court of Appeal, the appellant has no right to insist that the judgment should contain chapter and verse of all his submissions. He placed reliance on the case of Dike v. Nzeka 1986 4 NWLR part 34 page 144.

On the point that the issue of Statute of Limitation was not raised in the pleading, and that demurer proceedings have been abolished, learned counsel has submitted that the respondents were within their rights to raise the objection on Statute of limitation before trial or in the course of the trial, and he referred to Aguda, Practice, & Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria, 2nd Edition, at page, 279.

There is no gain saying that the application and objection that is the subject of controversy now was on point of law, being one on jurisdiction of the trial court to hear and determine the case. That being the case, all the learned trial judge needed to do was to consider the provision of the law under which it was brought and the affidavit evidence in support. This as can be seen on pages 76 - 77 of the record of proceedings was done by the learned trial. On page 76, the learned Judge considered the depositions in the supporting affidavit for dismissal of the suit, stating the date of dismissal of the appellant, and the relevant exhibit which "have already reproduced supra, and then even reproduced the relevant law which reads:-

"2. Where any action, prosecution or other proceedings commenced against any person for any, act done in pursuance of execution or intended execution of any law or of any public duty or authority of any such law, duty or authority, the following provisions shall have effect:-

(a) The action, prosecution or proceeding shall not be or be instituted unless it is commenced within three month next after the act neglect or default complained of, or in case of a continuance or damage or injury, within three months after the ceasing thereof:-"

See Public Officers (Protection) Law Cap. 121 Laws of Kano State.

Now, it is obvious from the counter-affidavit that the plaintiff/appellant did not challenge or debunk the date of the dismissal of the appellant vis a vis the date of the initiation of the suit in the High Court of Kano State. ***There was therefore nothing in the appellant's evidence to analyse or dwell on in detail, as the appellant would have wanted the learned trial Judge to do. Common sense dictates that unless there are oral or documentary material before the court that is worth the while of a Judge to consider extensively, he may not be obliged to make such detailed analysis. As a matter of fact, I would say the appellant's counter-affidavit contained unnecessary facts that were not apposite to the objection raised. The learned trial Judge was in the circumstances at liberty to accept and rely on the respondents' evidence as he did, for it is settled law that evidence that are relevant to the matter in controversy, and that have not been challenged or debunked remain good and credible evidence that may be used in the just determination of dispute.*** See *Adeleke v. Iyanda* 2001 13 NWLR part 729 page 1, *Aikhianbare v. Omoregie* 1976 12 SC.11, and *Obembe v. Wemabod* 1977 5 S.C. 115.

In this circumstance that the appellant's supporting evidence was bereft of anything substantial to deserve any detailed analysis, what was the learned trial Judge supposed to do, stray into a blank discourse because he wanted to satisfy the appellant that he considered his own side of the story? Definitely not. Now, ***what are the issues the learned trial judge was alleged not to have analysed in detail? They are that the Statute of limitation must have been pleaded specifically, the date when the injury complained***

of occurred, and the fact that negotiation to settle the suit were on. I think that the fact that the learned trial Judge did not go into a detailed consideration of these complaints in his judgment is inconsequential as long as he has considered the most vital aspects of the application, briefly as it may have

B been. In spite of that the lower court, as per Adamu JCA in his lead judgment correctly considered the surrounding circumstances of the motion on notice thus:-

"I am of the humble view that although the respondents in the present case did not specifically plead the statute of limitation in their statement of defence their subsequent motion introducing it was valid and proper as it was permitted by the learned trial Judge in his discretion and under the above principle on proceedings in lieu of demurrer. Moreover, I recall that when the learned counsel for the appellant was asked by this court during his oral argument of the appeal viva voce, he admitted or conceded that he did not take any step during the trial to challenge the validity or other wise of the respondents motion on notice....."

*Equally, it is the law that where a party fails to raise an objection during trial, he is deemed to have waived his right to do so on appeal on the particular point or procedure. In the present case since the appellant did not object against the procedure under which the respondents motion on notice was brought at the trial court, he is thereby estopped under the principle of waiver to raise the point at this stage - See *Tsokwa Oil Co. Ltd vs Bank of the North Ltd* (2002) 5 SCNJ 176 at 192; *Kossen (Nig) Ltd vs Savana Bank Ltd* (1995) 12 SCNJ 29; *Ojomo vs Ije* (1987) 4 NWLR (pt 64) 216 at 244 - 245, *Kaduna Textiles Ltd vs Umar* (1994) 1 NWLR (pt 319) 143....."*

G As for the date of the injury I have already dealt with that, as the learned trial Judge relied on the affidavit evidence which was not debunked. On the issue of negotiation, there was no need to go into it because it did not materially affect the prayers sought. In all these wise, the issue of lack of fair hearing raised by learned counsel for the appellant is of no moment. There was therefore no infringement of the right of fair hearing.

H In the final analysis, on this issue the objection raised being that of jurisdiction was properly raised, notwithstanding, the stage at which the ruling, and the order made. The most im-

portant thing is that the substance of the objection was dealt with and the correct decision was arrived at. An elementary principle of the law and which has been dealt with in a plethora of authorities is that an objection to the jurisdiction of a court can be raised at the beginning or the end of a proceeding, even just before judgment stage. It is fundamental that it can be raised even in an appellate court. See Ezomo v. Oyakhire 1985 1 NWLR part 2 page 195 Oloriode v. Oyebe 1984 1 SCNLR 390, and Mobil Oil Nigeria PLC v. Kena Energy International Limited 2001 1 NWLR part 695 page 555.

For the foregoing reasonings I resolve this issue in favour of the respondents and dismiss ground of appeal No. (1) to which it is married.

Issue (2) above is a spill over of issue (1), as the argument entails demurer which has already been touched in issue (1), most especially on the purport of Order 24 of the Kano State Civil Procedure Rules. The learned Counsel for the appellant in his brief of argument reproduced the following provision thus:-

“ORDER 24 RULE 1 STATES - No demurrer shall be allowed.”

(2) Any party shall be entitled to raise by his pleading any points of law, and any points so raised shall be disposed, of by the judge who tries the case at or after the trial. Provided that try consent the parties or by order of the court or a judge on the application of either party, the same may be set down for hearing and disposed of at anytime before the trial.

(3) If in the opinion of the court or a judge the decision of such point of law substantially disposes of the whole action, or any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the court or judge may thereupon dismiss the action or make such other order therein as may be just.”

The purpose of pleadings and raising any point therein, as is require in Rule (2) supra is to avoid springing surprises on parties, and this is an elementary law of practice and procedure which does not require the interpretation of the said Rule (2) supra to understand. See George v. Dominion Flour Mills Limited 1965 1 All N.L.R. page 71, Aniemeka Emegokwu v. James Okadigbo 1973 4 S.C. 113, and Umoffia v. Ndem 1973 12 S.C. 69.

If the function of pleadings is to put the other party on notice of what

to expect at the trial, then a motion on notice, (as was in the instant case) to dismiss a case on point of law precludes elements of surprises. The appellant cannot feign ignorance of the point of law raised before the motion was moved. The appellant was very much aware of what the respondents were seeking from the court, and had the opportunity to meet it headlong. The appellant cannot say that he was prejudiced, for I believe even if that point of law on Statute of limitation was raised in the statement of defence, he could not have preferred more argument than he did in the course of the proceedings in respect of the motion. As I have stated earlier in the judgment in the treatment of issue (1), the Statute of Limitation is a matter of jurisdiction which can be raised at any stage of litigation, and I will add here, even in the Supreme Court. In my words, in the very recent case of ERN v. Gold 2007 11 NWLR part 1044 page 1 which has been cited by the learned counsel for the respondents :-

"There is no doubt this rule connotes mandatory procedure, but it does not preclude a party from raising the defence of Statute of Limitation, at an appellate court, vide leave to do so even if he did not do so at the Court of first instance, because such issue borders on the fundamental issue of jurisdiction. The appellant in this case realized its mistake in not thrashing out the issue and so raised it in the Court of Appeal after leave was obtained."

The above has in fact taken it beyond the position in the instance case, for it went further than what the appellant is quarrelling about. It is instructive to note that the rule referred to in the quotation above has the same provision as the rule discussed under this issue (2) supra. See also Olubanjo v. Dawodu 2006 15 NWLR part page 76.

Perhaps I should mention here again that a substantial part of the argument under this issue has already been dealt with, and for fear of repetition I will stop at this juncture. I resolve the issue in favour of the respondents and dismiss grounds (2) and (3) of appeal to which it is married, as it lacks merit.

Having agreed and held that the action was caught by the Statute of Limitation, I am of the view that the need to consider the arguments covering issue (3) supra is obviated. Once the action was statute barred there was nothing to build on it. To proceed with the treatment of issue (3) is like chasing a wild goose, as the most impor-

tant aspect of the appeal has already been dealt with above and disposed of. Issue (3) is therefore resolved in favour of the respondent, and the related ground of appeal No. (4) is dismissed. This is an appeal against concurrent findings of two lower courts which should not ordinarily be disturbed unless the findings have been found to be perverse and have caused miscarriage of justice. See *Woluchem v. Gudi* 1981 5 SC. 291, *Overseas Construction Co. (Nig.) Ltd. v. Greek Enterprises (Nig.) Ltd* 1985 3 NWLR part 13 page 407, and *Adeye v. Adesanya* 2001 6 NWLR part 708 page 1. The end result is that this appeal fails in its entirety. I will however make no order as to costs.

TOBI JSC

This appeal deals with a narrow but vital area of law. It is on limitation of statute. That statute is the Public Officers (Protection) Law of Kano State; Cap. 121 of the Laws of Kano State. Section 2 of the Law provides in part:

“where any action, prosecution or other proceedings commenced against any person for any, act done in pursuance of execution or intended execution of any law or any public duty or authority of any such law, duty or authority, the following provisions shall have effect:-

(a) The action, prosecution or proceeding shall not be or be instituted unless it is commenced within three month next after the act, neglect or default complained of, or in case of a continuance or damage or injury, within three months after the ceasing thereof.”

Considering the above statute, in the light of the facts of the case, the learned trial Judge said in his judgment:-

“At the end of the day I find and hold that the suit was filed outside the 3 month period required by the law and is therefore statute barred.”

An appeal to the Court of Appeal was dismissed. This is a further appeal to this court. Briefs were filed and duly exchanged. The main issue is whether section 2 of the Public Officers (Protection) Law of Kano State is applicable to this case. It is the submission of the appellant that the law is not applicable. It is the submission of the respondent that the law is applicable. That is the crux of the case. Who is correct?

With the greatest respect to learned counsel for the appellant, I entirely agree with counsel for the respondents that the action filed by the appellant was statute barred as it violates section 2 of the Public Officers (Protection) Law, Cap. 121, Laws of Kano State. The argument of counsel for the appellant that the learned trial Judge failed to give a detailed ruling on the issue, with respect, is neither here nor there. Mukhtar JSC, dealing with the substance of the matter rightly came to the conclusion that “the plaintiff/appellant did not challenge or debunk the date of the dismissal of the appellant vis-a-vis the date of the initiation of the suit in the High Court of Kano State.” Accepting the position of the learned trial Judge Mukhtar, JSC, correctly said at page 9 of her judgment:

“The learned trial Judge was in the circumstance at liberty to accept and rely on the respondent’s evidence as he did, for it is settled law that evidence that are relevant to the matter in controversy and that have not been challenged or debunked remain good and creditable evidence that may be used in the just determination of a dispute.”

Limitation statutes are exact as to the time frame. They do not leave the court in doubt, like the Kano State Law It is three months; not a day longer than three months. It is clear from the facts of the case that the action is statute barred and I so hold. In the circumstance, I entirely agree with the concurrent findings of the two courts and the lead judgment of this court by Mukhtar, JSC that the appeal fails in its entirety. It is accordingly dismissed. I however reluctantly accede to the order made in the lead judgment on costs.

G **OGBUAGU JSC**

This is an appeal against the Judgment of the Court of Appeal, Kaduna Division (not Judicial Division as appears in the Appellant’s Brief of Argument) delivered on 12th December, 2002 affirming the Judgment of the Kano State High Court sitting in Kano- per Umar, J. delivered on 9th November, 2000 dismissing the Appellant’s case on the ground that it was statute barred.

Dissatisfied with the said Judgment, the Appellant has appealed to this Court on four Grounds of Appeal. He has in his Amended Brief of Argument, formulated three issues for determination. They

read as follows:

“3.1 *Whether the Lower Court was right in saying that the trial court considered all the issues raised by the Appellant in his reply to the preliminary objection raised by the respondent? If the answer is in the negative whether such denial of consideration of those issues amounted to the breach of rules affair hearing as enshrined in the 1999 Constitution? Ground 1 of the Appeal.* B

3.2 *Whether the Lower Court has correctly interpreted and applied the provisions of order 24 Rules (2) and (3) and order 25 Rule 6 (1) and (35) of the Kano State High Court (Civil Procedure) Rules 1988, Grounds 2 and 3 of the Appeal.* C

3.3 *Whether statute of limitation can said to be applicable in the circumstances of this matter having regard to the case of OFFOBOCHE VS OGOJA LGA (2201) (sic) 7 SCNJ 468 AT 483, 490 - 491 AND EKEOGU VS. ALIRI (1990) NWLR (part 126) at D 354, and the contractual nature of the relationship between the Appellant and Respondents. Ground 4 of the Appeal”.*

On my reading paragraphs 3.01 and 3.02 at page 3 of the Respondents’ Amended Brief of Argument, I hold that they have formulated a sole issue for determination namely, E

Whether the action is statute barred”.

In spite of this fact, at paragraph 3.05 at page 4 of the said Brief, the following appear:

“However, in the light of the fact that this is an appellant’s case and sole issue for determination identified by the Respondents’ dovetails into the three issues formulated by the appellant. The respondent (sic) will with respect argue the appeal in the order and manner argued by the appellant”. F

The Respondents through their learned counsel, proceeded to G do exactly that. Be that as it may, in my humble and respectful view, the crucial issue for determination is indeed whether or not the action of the Appellant is statute barred as found as a fact by the two lower courts. When the Appeal came up before the Court on 9th November, 2009, both learned counsel for the parties, adopted their H respective Brief. While the leading counsel for the Appellant, urged the Court to allow the appeal, Sa’eda, Esq.,-leading counsel for the Respondents, urged the Court to dismiss the appeal. Thereafter, Judgment was reserved till to-day.

Section 2 of the Public Officers (Protection) Law of Kano State, Cap. 121 of the Laws of Kano State, (hereinafter called “the Law”) provides as follows:

“Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Law or any public neglect or default in the execution of any such Law, duty or authority, the following provisions shall have effect:-

(a) the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof”.

There is a proviso which is not relevant in this case.

The above is clear and unambiguous and need no interpretation. At page 77 of the Records, the learned trial Judge, after reproducing the above provision, stated inter alia, as follows:

“It is in evidence that the plaintiff was dismissed from service on 30th January, 1990 (sic) (it is 1996) whereas he filed and commence (sic) this suit on 28th June, 1996.

The argument of Mr. Suraj Director of Civil Litigation are therefore in order that this suit was not commence (sic) within the three month (sic) period required by the law to wit.

Public officers protection law. I am buttress (sic) in my opinion by the decision in Ibrahim Vs. JSC (1998) 14 NULR (sic) (i.e. NWLR) part 584 page 1 at page 33.

At the end of the day I find and hold (sic) that this suit was filed outside the 3 month (sic) period required by law and is therefore statute barred”.

I agree.

The court below -per Adamu, JCA at page 246 of the Records, stated inter alia, as follows:

“..... Whichever date is taken or regarded as the effective date of the accrual of his cause of action, he is still late in commencing his suit which was filed outside the statutorily limited period of three (3) months.....”.

I agree.

At page 247 of the Records, the court below further stated inter alia:

".....It is therefore my humble view that whether we regard the date in Exhibit 16 or the backdated date which is preferred by the appellant, it does not make any difference on the application of the public office (sic) (Protection) Law of Kano State as in either case the 3 months period has elapsed and the appellants' action instituted after the three months period of limitation is consequently statute-barred under the law (supra)". B

I also completely agree.

In the case of Alhaji Aliyu Ibrahim v. Judicial Service Committee, Kaduna State & Anor. (supra) (it is also reported in (1998) 12 SCNJ. 255), this Court - per Iguh, JSC at pages 31 - 32, held inter alia: C

".....a statute of limitation, such as the Public Officers (Protection) Law, Cap. III Vol. 3, Laws of Northern Nigeria, 1963 (same as the Law) removes the right of action, the right of enforcement, and the right to judicial relief in a plaintiff and this leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute barred, that is to say, if such a cause of action is instituted outside the three months statutory period allowed by such law. E

The general principle of law is that where a statute provides for the institution of an action-within a prescribed period, proceedings shall not be brought after the time prescribed by such statute. Any action that is instituted after the period stipulated by the Statute is totally barred as the right of the plaintiff or the injured person to commence the action would have been extinguished by such law. See Michael Obiefuna v. Alexander Okoye (1961) 1 All NLR 357; Fred Egbe v. Adefarasin (No.2) (1985) 1 NWLR (Pt.3) 549; Fadare v. Attorney-General Oyo State (1982) NSCC. 643". F

As regards the procedure or at the stage the Preliminary Objection, was brought, in the case of Mr. Popoola Elabanio & Anor. v. Chief (Mrs.) Ganiat Da-wodu (2006) 15 NWLR (Pt.1001) 76; (2006) 6 SCNJ. 204; (2006) 6-7 S.C. 24; (2006) All FWLR (Pt.328) 604; (2006) Vol. 27 NSCOR 318; (2006) 6 JNSC (Pt.22) 81; (2006) 10-11 SCM. 267, this Court, dealt with the issue as to when an Objection as to jurisdiction, can be raised. See also my concurring Judgment. I note that the crux of the Objection of the Respondents in this suit leading to this appeal, was in respect of jurisdiction. In this re- G H

gard, it is now firmly settled that issue of jurisdiction or competence of a court to entertain or deal with a matter before it, is very fundamental. It is a point of law and therefore, a Rule of court, cannot dictate when and how, such point of law, can be raised. Being fundamental and a threshold issue of jurisdiction, it can be raised at any stage of the proceedings in any court including this Court. An Appellate Court can even raise it *suo motu*. See the case of Anyia v. Iyayi (1993) 7 NWLR (Pt. 305) and Kotoye v. Saraki (1994) 7 NWLR (Pt.357) 414 @ 466. I need emphasize as it is also settled that mandatory Rules of Court, are not as sacrosanct as mandatory statutory provisions and therefore, a rule of court, cannot override statutory provisions of the law, See the case of Katto v. Central Bank of Nigeria (1991) 9 NWLR (Pt.214) 126. I hold therefore, that the Objection of the Respondents, was rightly and properly upheld by the two lower courts. In ending this Judgment, I note that there are concurrent findings of fact or judgments of the two lower courts. I cannot, in all the circumstances, disturb or interfere with them. See the cases of Njoku v. Eme (2973) 5 S.C. 293; Chikwendu v. Mbamali (1980) 3-4 S.C. 31; and Ibodo v. Eneriofia (1985) 5-7 S.C.42 just to mention a few.

It is from the foregoing and the fuller lead Judgment of my learned brother, Mukhtar, JSC just delivered by him/her and which I too, dismiss. I had the privilege of reading before now, and agree with, that I too, dismiss this appeal as lacking in merit. Although costs follow the event, I abide with the order in respect of costs contained in the said lead judgment. I hereby affirm the said Judgment of the court below affirming the Judgment of the trial court.

G

OGEBE JSC

I read in advance the lead Judgment of my learned brother Mukhtar, JSC just delivered and I agree with the reasoning and conclusion.

H I also see no merit whatsoever in this appeal and I hereby dismiss it with no order as to costs.

FABIYI JSC

I have read before now the judgment just delivered by my learned brother, Mukhtar, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and I should be dismissed. B

The suit culminating in this appeal falls under the canopy of limitation of action. As defined in Black's Law Dictionary, Eight Edition, it is 'a statutory period after which a lawsuit or prosecution cannot be brought in court.' A cause of action is said to abate or is statute barred when no proceedings in respect thereof can be initiated because the time specified by the Limitation Law has expired or extinguished. After a period set by the law for commencing an action, a plaintiff, with a good cause of action cannot enforce same by judicial process because he has sat over his right for all times as the time stipulated by law for initiating such an action has become extinct. C D

It is extant in the record of appeal that the respondents herein, as defendants at the trial High Court of Justice, Kano relied on the provision of section 2 (a) of the Public Officers (Protection) Law, Cap 121, Laws of Kano State in challenging the jurisdiction of the said trial court to entertain the action of the appellant herein as plaintiff thereat. E

The relevant provision of the Law, as stated above, reads as follows:-

"2. Where any action, prosecution or other proceedings is commenced against any person for any act done in pursuance or execution or intended execution of any law or any public duty or authority or in respect of any alleged neglect or default in the execution of any such law, duty or authority, the following provisions shall have effect: F

(a) The action, prosecution of proceedings shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of or in case of a continuance of damage or injury within three months next after the ceasing thereof." H

The learned trial Judge considered the application filed by the defendants to challenge the competence of the action on the ground that the same was statute barred. At page 77 of the transcript record of appeal, he found as follows:-

"It is in evidence that the plaintiff was dismissed from service on 30th January, 1990 whereas he filed and commence (sic) this suit on 28th June, 1996.

The argument of Mr. Suraj Director of Civil Litigation are (sic) that this suit was not commence (sic) within the three month period required by the law to writ (sic) Public Officers Protection Law. I am buttress (sic) in my opinion by the decision in Ibrahim v. JSC (1998) 14 NWLR part 584 1 at page 33. At the end of the day I find and holf (sic) that this suit was filed outside the 3 three month period required by the law and is therefore statute barred".

The learned trial Judge was quite right in his clear finding and conclusion reached as depicted above. I commend the stance taken by him. It hardly needs any gain-saying that the action initiated by the appellant herein, as plaintiff at the trial court, is clearly statute barred. Umar, J. was perfectly right in placing reliance on the decision in Ibrahim v. JSC (supra). See also *Egbe v. Adefarasin (1987) 1 NWLR (Pt. 47) 1*; *Sanda v. Kukawa L.G (1991) 2 NWLR (pt. 174) 379 at 388*; *Emiafor v. Nigerian Army (1999) 12 NWLR (631) 326 at 369*.

The court below had no difficulty in confirming the findings of fact of the learned trial judge and his application of the applicable law. I have no reason to interfere with their balanced concurrent finding of fact. It is clear that this court will not interfere unless compelling reasons are shown by the other side which justify interference. None has been pinpointed by the appellant and none is apparent on the face of the record. I shall not interfere. See *Kale v. Coker (1982) 12 SC 252*; *Seatrade v. Awolaja (2002) 2 SC (Pt. 1) 35*; *Oduntan v. Akibu (2000) 7 SC (Pt 2) 106*; *Anaeze v. Anyaso (1993) 5 NWLR (Pt. 291). 1*; *Echi & Ors. v. Nnamani & Ors. (2000) 5 SC 62 at 70*; *Seven Up Bottling Co. v. Adewale (2004) 4 NWLR (Pt. 862) 183*; *Fajemirokun v. C. B. Nig. Ltd (2004 5 NWLR (Pt. 1135) 588 at page 599*.

For the above reasons and the fuller ones clearly set out in the lead judgment, I have no doubt in my mind that the appeal is devoid of merit and should be dismissed. I order accordingly and abide by all consequential orders; that relating to costs inclusive.